

AG Contract No KR02-1760TRN  
ADOT ECS File: JPA 02-101  
Project: G 1051 06C  
Section: Economic Strength Program (ESP)  
Grant: -Reconstruct  
(and Pave 3.2 miles of Aviation Drive)

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF BENSON

THIS AGREEMENT is entered into February 18, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-956, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF BENSON, acting by and through its CITY COUNCIL (the "City").

### I. RECITALS

1 The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2 The City is empowered by Arizona Revised Statutes Section 11-201 and 28-7282 et seq to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3 The City has requested Economic Strength Project (ESP) funds in the amount of \$36,000.00; and the Commerce and Economic Development Commission have recommended the approval of such funds for the City, and the Transportation Board has approved the funding, for the reconstruction of improvements to 3.2 miles of Aviation Dr. to provide improved access, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows.

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NO. 25814  
Filed with the Secretary of State  
Date Filed: 02/18/03

Janice K. Brewer  
Secretary of State

By: Vicky J. Greenwood

**II. SCOPE OF WORK****1. The City will:**

a. Insure the additional commitment of 68.42% of the total estimated Project cost, or \$78,000.00, whichever is more, from the City or other sources (not including ESP funds) to the Project. Accomplish construction of the Project by public bidding, in strict compliance with State procurement laws, rules and regulations. Upon completion, approve and accept the Project on behalf of the City and provide maintenance.

b. No more often than monthly, invoice the State for ESP funds (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012), in an amount not to exceed \$36,000.00.

c. Provide the State a copy of the executed Project contract(s), and draw down and expend the State ESP funds no later than twelve (12) months after the effective date of this agreement. Provide the State detailed written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable and appropriate documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended.

d. Reimburse the State any funds received from the State under this agreement, which are not specifically and directly expended in compliance with the ESP grant application, which is attached hereto and made a part hereof, and are subsequently disallowed by the State.

e. Provide the State (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report detailing the direct and indirect impact of the Project, to include jobs created, jobs retained and related data.

**2. The State will:**

Within thirty (30) days after receipt and approval of the ESP contract(s) and subsequent monthly progress payment invoices, reimburse the City for work completed on the Project funds in an amount not to exceed \$36,000.00.

**III. MISCELLANEOUS PROVISIONS**

1. The only interest of the State in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance by the State of any of the provisions of this agreement. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys fees.

3. The total amount of ESP funds expended under this agreement shall not exceed 31.58% of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental agency, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party. Further, this agreement may be terminated and the ESP grant cancelled by the State if the City, in the opinion of and by action of the Transportation Board, fails to pursue due diligence on the Project or in the performance of any of the terms of this agreement.

5. This agreement shall become effective upon filing with the Secretary of State

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of State employees.

7. The provisions of Arizona Revised Statutes Section 35-214 pertaining to 5-year records retention by the City and audit by the State are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement, except as otherwise specified herein, shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424


City of Benson  
City Manager  
Box 2223  
Benson, AZ 85602  
FAX (520) 586-3375

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

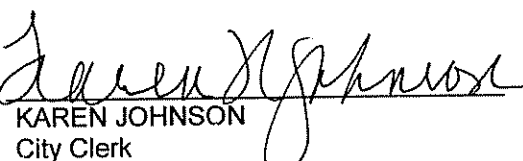
**CITY OF BENSON**

**STATE OF ARIZONA**  
Department of Transportation

By   
MIKE MONTROY  
Mayor

By   
DALE BUSKIRK, Acting Division Director  
Transportation Planning Division

ATTEST:

By   
KAREN JOHNSON  
City Clerk

RESOLUTION NO. 2002-04

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA, SUPPORTING AN ECONOMIC STRENGTH GRANT APPLICATION TO THE ARIZONA DEPARTMENT OF COMMERCE IN THE AMOUNT OF \$120,000 TO CONVERT THE AIRPORT HAUL ROAD IN TO A PAVED ACCESS ROAD TO ENCOURAGE THE ESTABLISHMENT OF BUSINESSES AT THE BENSON MUNICIPAL AIRPORT.

WHEREAS, the City of Benson, with Federal and State "Airport Improvement Program" (A.I.P.) grants, constructed the Benson Municipal Airport, but could not receive grant funding under these airport grant programs to construct this road to the standards of an access road; and

WHEREAS, the airport road was built to a minimum standard to allow construction equipment access to the airport and to meet the minimum standards of the Corps of Engineers' 404 permit; and

WHEREAS, this haul road quickly deteriorated in to a pot-holed, 15 M.P.H., country road within 6 months after the airport was opened; and

WHEREAS, the AAI Corporation, a U.S. Department of Defense contractor, now proposes to locate a business on this airport, but finds the access road to be totally unacceptable for the safety of its employees and its customers.

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA, that the City of Benson hereby makes application for \$120,000 under the Economic Strength Program to construct a road base and then pave our airport road and that both the City of Benson and the AAI Corporation will each provide an additional \$15,000 (10%) matching funds, for a grand total of \$30,000 (20%) matching funds to construct this road.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA, this 4<sup>th</sup> day of March, 2002.

  
MIKE MONTROY - Mayor

ATTEST:

  
KAREN H. JOHNSON - City Clerk

APPROVED AS TO FORM:

  
ANN ROBERTS - City Attorney

THE REGULAR MEETING OF THE MAYOR AND CITY  
COUNCIL OF BENSON, ARIZONA HELD NOVEMBER 4, 2002  
AT CITY HALL AT 7:00 P.M.

MAYOR MONTROY  
OPENED THE MEETING AT 7:00 P.M WITH  
THE PLEDGE OF ALLEGIANCE.

PRESENT WERE: MAYOR MONTROY, VICE MAYOR SCOTT,  
COUNCILMEMBERS MALDONADO, CRAWFORD, KING, HAMILTON, AND AMOX.

Approval of Minutes: Councilmember Hamilton moved to approve the October 21, 2002 minutes as presented. Seconded by Councilmember Crawford. Motion passed 7-0.

Call to the Public-  
Agenda Items: Mike Stanley, a City employee, spoke at length about changing the Compliance Officer to a secretarial position.

PROCLAMATION: Mayor Montroy proclaimed the second Friday and Saturday of November 2002 as "Buddy Poppy Days" which the proceeds are used for the benefit of disabled and needy veterans and the widows and orphans of deceased veterans.

OLD BUSINESS: None.

NEW BUSINESS:

Approval of Intergovernmental Agreement  
Between the City of Benson and Cochise County  
Concerning Paving and other Public Works  
Contracting Services:

Councilmember Maldonado moved to approve the Intergovernmental Agreement (IGA) between the City of Benson and Cochise County concerning paving and other Public Works contracting services. Seconded by Councilmember Crawford. Motion passed 7-0.

Approval of Intergovernmental Agreement  
Between the City of Benson and the Arizona  
Department of Transportation  
Accepting an Economic  
Strength Grant For Improving

Aviation Drive: Councilmember Crawford moved to approve the Intergovernmental Agreement between the City of Benson and the State of Arizona Department of Transportation accepting an Economic Strength Grant for improving Aviation Drive. Seconded by Councilmember Maldonado. Motion passed 7-0.

Approval of Appointments to the  
Benson Senior Citizen  
Advisory Board:

Councilmember Maldonado moved to reappoint J. W. Hill to the Benson Senior Citizen Advisory Board. Seconded by Councilmember Crawford. Motion passed 7-0.

Councilmember King moved to reappoint Francine Sierakoski to the Benson Senior Citizen Advisory Board. Seconded by Councilmember Maldonado. Motion passed 7-0.

Councilmember Maldonado moved to reappoint Conny DeSpain to the Benson Senior Citizen Advisory Board. Seconded by Councilmember Hamilton. Motion passed 7-0.

Councilmember Hamilton moved to appoint Richard Roubos to the Benson Senior Citizen Advisory Board. Seconded by Councilmember King. Motion passed 7-0.

Vice mayor Scott moved to appoint Frank G. Taticek to the Benson Senior Citizen Advisory Board. Seconded by Councilmember Amox. Motion passed 7-0.

Approval of Resolution Designating the  
Election Date, Purpose of Election,  
Deadline for Voter Registration and  
Designating the Place and last  
Date for Candidates to File Nomination

Papers: Councilmember King moved to approve the Resolution designating the Election Date, Purpose of Election, Deadline for voter registration and designating the Place and last date for Candidates to file Nomination Papers. Seconded by Councilmember Amox. Motion passed 7-0.

Approval of New Job Description for  
Utilities Secretary, whereby abolishing the position of  
Compliance Officer:

Vice Mayor Scott moved to approve the new job description for Utilities Secretary, whereby abolishing the position of Compliance Officer. Seconded by Councilmember Amox. Motion passed 7-0.

COUNCIL DIRECTIVES: None.

DEPARTMENT  
REPORTS:

No comments.

Approval of Bills:

Councilmember Maldonado moved to approve the bills as presented.  
Seconded by Councilmember King. Motion passed 7-0.

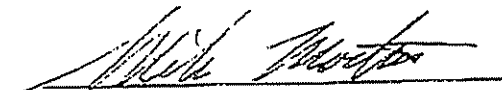
Call to the Public:

Other:

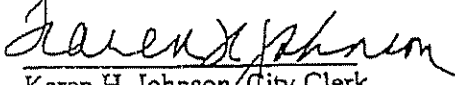
None.

Adjournment:

Councilmember King moved to adjourn at 7:12 P.M. Seconded by  
Councilmember Amox. Motion passed 7-0.

  
Mike Montroy, Mayor

ATTEST:

  
Karen H. Johnson, City Clerk

**LEGAL DETERMINATION**

**OF THE**

**CITY OF BENSON**

I, ANN P. ROBERTS, City Attorney for the City of Benson, Arizona, have reviewed the foregoing Intergovernmental Agreement between the State of Arizona and the City of Benson providing for Economic Strength Project (ESP) funds to be awarded to the City of Benson for the reconstruction of improvements to 3.2 miles of Aviation Drive, Benson, Arizona.

The City of Benson is authorized under the laws of the State of Arizona to enter into this Intergovernmental Agreement. This Intergovernmental Agreement is in proper form. And, the Mayor of the City of Benson as authorized by the City Council, is the proper person to execute said Intergovernmental Agreement.

Dated this 4th day of November, 2002.

  
ANN P. ROBERTS, City Attorney





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

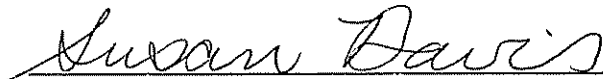
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-1760TRN (JPA 02-101), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED February 11, 2003.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section